

LORRE SYLVAN SMITH, ESQ.

111 Northfield Avenue - Suite 208

West Orange, NJ 07052

(973) 325-1600

Attorney for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

Rogelio Caraballo, Jr., Mallelyn Rivera Ortiz,
Celso Rivera Ortiz,

Plaintiffs,

v.

Newark Police Department, City of Newark,
Antonio Cruz, Rafael Cabrera, Detective James
Cullen, Lieutenant John Evangelista, John Doe
1-10 (fictitious names), Jane Doe 1-5
(fictitious names), Paul Poe 1-10 (fictitious
names), Mary Poe (fictitious name), John Roe
(fictitious name),

Defendants.

CIV. NO. 08-3381 (KSH) (MAS)

**NOTICE OF MOTION TO
AMEND COMPLAINT TO NAME
FICTITIOUS DEFENDANT**

TO: John B. Nance, Esq.
Assistant Corporation Counsel
City of Newark - Department of Law
920 Broad Street
Newark, New Jersey 07102
Attorneys for Defendants Newark Police Department and City of Newark

SIR/MADAM:

PLEASE TAKE NOTICE that on Monday, April 19, 2010, at 9:00 o'clock in the forenoon, or as soon thereafter as counsel may be heard, the undersigned applies at the United States District Court of New Jersey, at the Federal Courthouse in Newark, New Jersey, for an Order granting leave to file and serve an amended complaint. In support of the within application, the undersigned shall rely upon the annexed Certification.

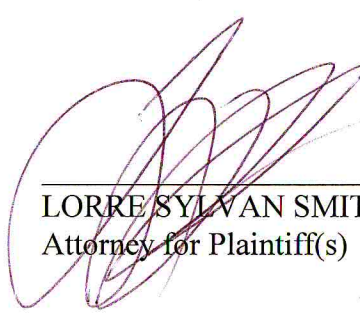
CERTIFICATION

I certify that the original of the within Notice of Motion has been filed with the Clerk of the Court, via efilng, and that true copies have been served on all parties.

I certify that:

- ☐ I have attempted, unsuccessfully, to reach an amicable resolution of the issues raised by this Motion.
- ☐ I have, in good faith, attempted unsuccessfully to confer with the opposing party (ies) regarding the issues raised by this Motion.
- ☒ The issues raised by this Motion are required to be addressed to and decided by the Court.

Dated: March 19, 2010



LORRE SYLVAN SMITH
Attorney for Plaintiff(s)

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v.

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John Doe 1-10 (fictitious names), Jane Doe 1-5
(fictitious names), Paul Poe 1-10 (fictitious
names), Mary Poe (fictitious name), John Roe
(fictitious name),

Defendants.

CIV. NO. 08-3381 (KSH) (MAS)

**CERTIFICATION
OF COUNSEL**

Lorre Sylvan Smith, of full age, being duly sworn upon his oath certifies and says:

1. I am the attorney for the plaintiff in the within matter and am fully familiar with the facts herein.

2. On June 11, 2006 Plaintiff attended the Portugese Festival in the Ironbound section of Newark, New Jersey.

3. At that time, Plaintiff asserts he was assaulted, kidnapped, beaten and abused by officers of the Newark Police Department who in the course of separating participants in a verbal dispute, unrelated to plaintiff, beat and abused plaintiff because of his sexual orientation or for other reasons unknown to plaintiff.

4. Plaintiff was brutalized, handcuffed and thrown to the ground while numerous officers of the Newark Police Department watched.

5. Plaintiff was then dragged into an unmarked car by two police officers while other police stood by and watched.

6. Plaintiff was then taken to a remote location where these officers dragged him out of the car and beat him further.

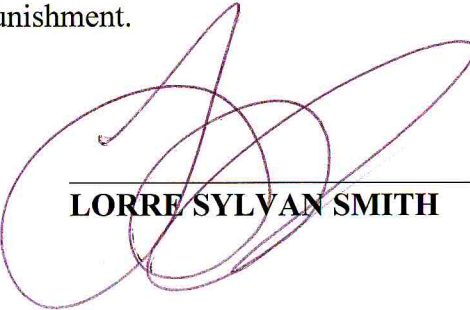
7. Through the course of discovery in my litigation, Plaintiff evaluated pictures and observed officers at depositions and Plaintiff was able to determine that the officers who brutalized him were Antonio Cruz and Rafael Cabrera.

8. Plaintiff further determined that present at the scene were Detective James Cullen and Lieutenant John Evangelista.

9. Plaintiff therefore requests the Court permit him to amend his Complaint to identify these officers as the previously fictitiously named defendants. A form of the proposed amended complaint is annexed.

I certify that the foregoing statements made by me are true. I am aware that if any of the above stated is wilfully false, I am subject to punishment.

Dated: March 19, 2010



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ORDER

THIS MATTER having come before the Court upon the application of Lorre Sylvan Smith, attorney for the plaintiff, and the Court having considered the application of Counsel, the consent of Counsel for the defendant, and for good cause having been shown,

IT IS on this _____ day of _____, 2010

ORDERED that plaintiff is granted leave to file and serve an Amended Complaint naming Antonio Cruz, Rafael Cabrera, Detective James Cullen, Lieutenant John Evangelista in place of the fictitiously named defendants; and it is further

ORDERED that a copy of this Order shall be served upon all parties within _____ days of the date hereof.

J.S.C.